



**Wambugu (Suing as the Legal Representative of John Wamburu Kamau) v  
Tembo Ventures Housing Co-operative Ltd & another (Environment & Land  
Case 152 of 2018) [2022] KEELC 2300 (KLR) (25 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2300 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 152 OF 2018**

**BM EBOSO, J**

**MAY 25, 2022**

**BETWEEN**

**FELISTAS WAITHIRA WAMBUGU ..... PLAINTIFF**

**SUING AS THE LEGAL REPRESENTATIVE OF JOHN WAMBURU KAMAU**

**AND**

**TEMBO VENTURES HOUSING CO-OPERATIVE LTD ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The dispute in this suit revolves around the question of ownership of land parcel number Ruiru East/ Juja East Block 2/1074 situated in Juja Sub-County of Kiambu County. The land measures 1.300 hectares. The estate of the late John Wamburu Kamau holds a title deed issued to John Wamburu Kamau on November 17, 1989. The Land Registry opened a first edition land register relating to the said land on 25/4/2017 in the name of the Government of Kenya. On the same day, the Land Registry registered the land in the name of one John Mburu Kamau. On 28/6/2017, the Land Registry registered the land in the name of one James Kamau Njure whom the Land Registry described as the Personal Representative of John Mburu Kamau pursuant to a Grant issued in Kiambu Chief Magistrate Court Succession Cause No 210 of 2014. On the same day, the Land Registry registered the land in the name of John Kamau Njure as absolute proprietor and issued to him a title deed. On 11/8/2017, the land was registered in the name of Tembo Ventures Housing Co-operative Society Ltd. Attempts by Tembo Ventures Housing Co-operative Society Ltd to subdivide the land and allocate it to its members is what triggered this suit.



## Plaintiff's Case

2. Felistas Waithira Wamburu initiated the suit on behalf of the estate of the late John Wamburu Kamau through a plaint dated 9/5/2018. Her case is that she is the widow of the late John Wamburu Kamau [the deceased] who died on 24/8/2008. She is the administratrix of the deceased's estate. The deceased owned the suit property, having been registered as proprietor of the land on November 17, 1989. The deceased acquired the land from Juja Farm where he was a shareholder. The deceased was in possession of the suit property up to the time of his death. Upon his demise, his family continued to possess and use the land uninterrupted. In September 2017, she observed strange people enquiring about the land. This prompted her to apply for a search on the suit property. The search revealed that on 11/8/2017, the suit property had been registered in the name of Tembo Ventures Housing Co-operative Society Limited. She thereafter applied for a copy of the parcel register. The parcel register supplied to her by the Land Registry revealed that on 25/4/2017, the Land Registry opened a new first edition parcel register relating to the suit property yet there previously existed a parcel register opened on 10/11/1989 and a title deed issued on November 17, 1989. Perusal of the new parcel register further revealed that the Land Registry had used succession documents relating to Kiambu Magistrate Court Succession Cause No 210 of 2014 to register the land in the name of James Kamau Njire as administrator of the estate of one John Mburu Kamau. Inquiries related to Kiambu Magistrate Court Succession Cause No 210 of 2014 revealed that the said succession cause related to the estate of one Kangethe Kiarie Watiri [deceased] and the administrator appointed in the said succession cause was one Hellen Mwihaki Kangethe. It further revealed that the assets distributed in the said succession cause was land parcel number Ndumberi/Riabai/713. At that point, it dawned on her that a fraudulent scheme had been used to defraud her late husband's estate the suit property.
3. The plaintiff testified as PW1. She adopted her written statement dated 9/5/2018. She outlined her case as summarized above. During cross-examination, she testified that her late husband acquired the suit property through purchase of shares in Juja Farm and that the title to the suit property was processed by Juja Farm who gave it to her late husband in her presence. She produced the following exhibits: (i) Death Certificate relating to her late husband, John Wamburu Kamau; (ii) Grant of Letters of Administration Ad Litem; (iii) Copy of the Title Deed in the name of John Wamburu Kamau of ID No xxxxxxx/xx, dated 17/11/1989; (iv) Official Search issued to her on 25/9/2017; (v) Copy of the new Parcel Register opened on 25/4/2017; (vi) Letter dated 16/1/2018 to the Executive Officer of Kiambu Chief Magistrate Court; (vii) Letter dated 2/2/2018 from the Executive Officer of Kiambu Chief Magistrate Court; (viii) Letter dated 27/2/2010 to the 1st defendant; and (ix) Notice of Intention to Sue made to the 2nd defendant. She urged the court to grant the reliefs sought in the plaint.

## 1st Defendant's Case

4. The 1st defendant filed a defence and counter-claim dated 8/7/2018. Its case was that it conducted an official search on the suit property on 21/7/2017 at the Thika Land Registry as part of due diligence prior to executing a sale agreement for purchase of the suit property. The official search revealed that the suit property was registered in the name of James Kamau Njire. Its officials conducted a physical inspection of the suit property prior to purchasing it and established that the suit property was vacant. After purchasing the suit property, it took possession and commissioned a surveyor to mark the beacons and subdivide the suit property. During the process of sale of the sub divisions to its members, the plaintiff appeared on the scene and uprooted some of the beacons.
5. The 1st defendant denied that the transfer to James Kamau Njire was fraudulent. It denied the allegations of fraud. It admitted that the matter was investigated by the CID but added that the investigations were inconclusive. By way of counterclaim, it urged the court to cancel the title held



in the name of the late John Wamburu Kamau and to issue a permanent injunction restraining the plaintiff against interfering with its possession of the suit property

6. The 1st defendant presented one witness, Ian Mutethia, who testified as DW1. He adopted his witness statement filed on 23/7/2018. He outlined the 1st defendant's case as summarized above. His further evidence was that in 2017, the 1st defendant was interested in acquiring a property around Juja. They found an undisclosed land broker who showed them the suit property. The suit property was vacant and suitable for the 1st defendant's purpose. They were linked to the proprietor of the suit property, one James Kamau Njure, who then took them to his lawyer, Mrs Beth Gathoni Mwangi. They engaged a lawyer who conducted a search and "assisted with the drafting of the sale agreement." At that point, it was agreed that Mrs Beth Gathoni Mwangi would handle the completion of the sale for both parties. The said advocate processed all the completion documents. They paid the purchase price of Kshs 7,700,000 together with her legal fees. The suit property was subsequently registered in the name of the 1st defendant.
7. DW1 produced the following exhibits in support of the 1st defendant's case: (i) Sale Agreement dated 7/8/2017; (ii) Co-operative Bank Remittance Notification for Kshs 7,700,000; Copy of the title deed in the name of James Kamau Njure; (iv) Copy of Official Search dated 21/7/2017; (v) Copy of Parcel Register opened on 25/4/2017; (vi) Copy of title deed in the name of the 1st defendant, dated 11/8/2017; (vi) Copy of Official Search dated 11/8/2017; and (vii) Letter dated October 13, 2017 from the Land Registrar to the DCI, Juja.
8. The 1st defendant's second witness was Mrs Beth Gathoni Mwangi who testified as DW2. She adopted her witness statement dated 18/9/2019. Her evidence was that in July 2017, her client, James Kamau Njure, informed her that he had gotten a buyer for his property, land parcel number Ruiru East/Juja East Block 2/1074. He asked her to accompany him to Kenya Breweries, Thika Road, for negotiations. They went to Kenya Breweries and met representatives of the 1st defendant. Purchase price was agreed at Kshs 7,700,000. The purchaser [1st defendant] engaged Mwangi Wambugu Advocate to conduct a search and do due diligence on their behalf. A sale agreement was subsequently signed. Among the terms of the sale agreement was that the vendor's advocate was to avail the following completion documents at least seven (7) days before the completion date: (i) original title deed; (ii) duly executed transfer form of the property in duplicate; (iii) a valid consent form from the Land Control Board; (iv) a valid land rates clearances, if applicable; (v) three passport-size photos of the vendor; (vi) affidavit of spousal consent; (vii) copies of identity cards; (viii) KRA Pin Certificate of the vendor.
9. She added that on 7/8/2017, she accompanied her client to Kenya Breweries where he signed transfer forms in the presence of the purchaser's representatives. While there, they called Mr Mwangi Wambugu Advocate and the said Advocate indicated that he was bereaved and was attending the funeral in Muranga. At that point, representatives of the 1st defendant requested her to do the registration of the documents and obtain a title in their name. She registered the documents and procured a title in the name of the 1st defendant on 11/8/2017. She delivered the title to the 1st defendant. Thereafter, the 1st defendant wired money onto her account. Later, she was summoned by the CID to respond to allegations by persons claiming ownership of the suit property. During cross examination, she testified that she attested to the signature of both the vendor and representatives of the purchaser on both the sale agreement and the transfer.

## 2nd Defendant's Case

10. The 2nd defendant filed a statement of defence dated 3/7/2018. He denied the averments made in the plaint, including the contention that the deceased was the lawful owner of the suit property. As an alternative defence, he averred that if the suit property was registered in the name of the 1st defendant,



then the registration was based on documents presented to the Land Registry and the Land Registry exercised due diligence and acted on the said documents believing them to be genuine. He contended that the Land Registry performed its duties professionally as prescribed by the law. He urged the court to dismiss the suit against it. The 2nd defendant participated in the trial but did not lead evidence. Similarly, the 2nd defendant did not file written submissions.

### **Plaintiff's Submissions**

11. The plaintiff filed written submissions dated 7/10/2021 and rejoinder written submissions dated 14/1/2022. Both sets of written submissions were filed through the firm of Waithira Mwangi & Co Advocates. Counsel for the plaintiff summarized the plaintiff's case and evidence as outlined above, making extensive reference to various exhibits. Counsel observed that the Land Registrar had failed to avail the documents that led to the opening of the new land register on 25/4/2017. Counsel added that the purported grant which was used to register the suit property in the name of James Kamau Njure was a fraudulent document because Kiambu CMC Succession Cause number 210 of 2014 related to the estate of the late Kangethe Kiarie Watiri aka Gathuni Kiarie and the asset subject matter in the said succession cause was Ndumberi/Riabai/713. Counsel faulted the Land Registry for using a purported grant relating to a succession cause filed in 2014 to transmit a purported title registered in 2017, contending that if there was a succession cause relating to John Mburu Kamau in 2014, the same John Mburu Kamau could not have signed a transfer conveying the suit property into his own name in April 2017.
12. Counsel for the plaintiff added that the plaintiff had demonstrated that she still held the original title issued to her late husband and that they had all along had possession of the land. Counsel argued that this was the reason she immediately reported the matter to the police the moment she noticed strangers enquiring about the land and ultimately discovered the fraud. Counsel submitted that the two defendants had failed to produce any document that supports the opening of the register in the name of the Government and the transfer into the name of John Mburu Kamau whose identification details were missing in the impugned land register. Counsel argued that the plaintiff had established that the title held by the 1st defendant was procured using forged documents. Counsel urged the court to grant the prayers sought by the plaintiff.

### **1st Defendant's Submissions**

13. The 1st defendant filed written submissions dated 12/1/2022 through the firm of Wagara, Koyyoko & Company Advocates. Counsel submitted that the plaintiff was unable to produce any document to support or authentic the title she holds in the name of John Wamburu Kamau. Counsel added that the records held in the Land Registry did not support the title held by the plaintiff, adding that the records support the title held by the 1st defendant. Counsel argued that the 1st defendant had given a chronological and cogent account of the process through which it acquired its title. Counsel contended that no evidence was led to support the contention that the parcel register opened on 25/4/2017 was a fraudulent second register relating to the suit land. Counsel further contended that no evidence was led to suggest that there existed any other register other register other than the register opened on 25/4/2017. It was counsel's position that the plaintiff's title dated 17/11/1989 was not supported by any document.
14. Counsel further argued that the fact that the grant which was used to convey the title to James Kamau Njure did not relate to John Mburu Kamau may just be a typographical error. Counsel added that the 1st defendant was an innocent purchaser for value whose title was protected. Counsel further argued that the authenticity of the plaintiff's title cannot be based on criticism of the process leading to the acquisition of the 1st defendant's title. Lastly, counsel submitted that the Land Registrar had failed



to verify the plaintiff's title. Counsel urged the court to dismiss the plaintiff's suit and grant the 1st defendant's counterclaim.

### **Analysis and Determination**

15. I have considered the pleadings, the parties' evidence, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence on the key issues in this suit. Parties did not agree on a common statement of issues to be determined by the court. Having considered the pleadings, evidence and submissions presented in this suit, the following are the key issues that fall for determination in the suit: (i) Whether the land register purportedly opened by the Thika Land Registry on 25/4/2017 in relation to land parcel number Ruiru East/Juja East Block 2/1074 [the suit property] is lawful; (ii) Whether the subsequent registrations purportedly made in the said land register marked as entry numbers 1 to 7 are lawful; (iii) Who is the lawful owner of the suit property; and (iv) What are the appropriate reliefs or orders to be made in the circumstances of this suit. I will make brief sequential pronouncements on the four issues in the above order.
16. The first issue is whether the land register purportedly opened by the Land Registry on 25/4/2017 in relation to land parcel number Ruiru East/Juja East Block 2/1074 [the suit property] is lawful. The impugned land register was opened on 25/4/2017 as a first edition register. The 2nd defendant did not present any evidence on the process and documentation that led to the opening of the land register by the Land Registry. The first registered proprietor of the suit property in the impugned land register is the Government of Kenya. No evidence was presented to demonstrate how the Government of Kenya got to be registered as proprietor of the land. On the same day [25/4/2017] that the land register was opened and the Government of Kenya was registered as proprietor of the land, the impugned land register indicates that the Government of Kenya transferred the land to one John Mburu Kamau. No document was presented to support that transfer. If indeed this was an authentic land register, there would be documentation relating to the process of registration of the Government of Kenya as proprietor. There would similarly be documents relating to the transfer of the land to a private individual. The impugned land register is expressed as having been opened on 25/4/2017. Disposal of land registered in the name of the Government of Kenya would not have happened in April 2017 without documentation involving the National Land Commission, the Directorate of Land Administration and the Chief Land Registrar. Under Article 67(2) of *the Constitution*, the National Land Commission is mandated to manage public land on behalf of the two levels of Government.
17. Further, there is no evidence that the suit property hitherto belonged to the Government of Kenya in 2017. The evidence before court is that the suit property belonged to Juja Farm up to 1989 when it was acquired by the deceased through purchase of shares in the company.
18. The totality of the foregoing is that the impugned land register purportedly opened on 25/4/2017 was opened illegally and without any supporting documents. Put differently, the said land register is unlawful.
19. The second issue is whether the subsequent registrations purportedly made in the impugned land register marked as entry numbers 1 to 7 are lawful. I have observed that there is no supporting documentation relating to the first entry that designated the Government of Kenya as proprietor of the suit property in relation to the impugned land register. There is similarly no supporting documentation relating to the second entry that designated John Mburu Kamau as proprietor of the suit property on the very same day that the land register was opened and the land was purportedly registered in the name of the Government of Kenya. For the Government of Kenya to transfer to John Mburu Kamau an absolute title in 2017, there would be a trail of documentation, including a duly executed transfer. No single document was availed. There was no evidence by the alleged John Mburu



Kamau or his estate on how he acquired the title that was purportedly sold to the 1st defendant. His ID card number was not captured in the register.

20. Entry number 3 relates to registration of the suit property in the name of James Kamau Njure, in the capacity of a purported administrator of the estate of John Mburu Kamau, pursuant to a Grant issued in Kiambu Magistrate Court Succession Cause No 210 of 2014. Evidence presented during trial established that Kiambu Chief Magistrate Court Succession Cause No 210 of 2014 related to the estate of Kangethe Kiarie Watiri alias Gathimi Kiarie. It did not relate to John Mburu Kamau. Secondly, the administrator appointed by the court in the said cause was Hellen Mwhaki Kangethe; not James Kamau Njure. Thirdly, the asset involved in the said succession cause was land parcel number Ndumberi/Riabai/713; not the suit property. It is clear from the above evidence that this was a fraudulent entry made in relation to a purported deceased proprietor who perhaps never existed. So was entry number 4 which purported to convey the suit property from James Kamau Njure [as administrator of the estate of John Mburu Kamau] to James Kamau Njure as absolute proprietor. The same goes for entry number 5 which relates to issuance of a title deed to James Kamau Njure.
21. Entry number 6 relates to the purported registration of the 1st defendant as proprietor of the suit property. Entry number 7 relates to issuance of title to the 1st defendant. Registration of the suit property in the name of the 1st defendant was purportedly procured in June 2017 by an advocate of the High Court of Kenya. No consent of the land control board was presented to support the registration. No signed, stamped and registered transfer was presented to support the registration. No evidence of payment of stamp duty was presented. Barely a few months after the two entries were made in the impugned land register, the Land Registry and the two parties to the transaction were not able to avail documents supporting the entries. The logical conclusion is that the two entries were part of the fraudulent scheme that preceded them and were procured without the requisite documentation. Consequently, my finding on the legality of the said entries is that they are illegal and fraudulent.
22. The third issue is who is the lawful proprietor of the suit property. The plaintiff testified that her late husband, John Wamburu Kamau, acquired the suit property through purchase of shares in Juja Farm. She further testified that her late husband was registered as proprietor on November 17, 1989 through a registration process carried out by Juja Farm who were the subdivision scheme owners. Her late husband's estate holds the original title deed processed by Juja Farm and issued to her late husband. Most importantly, her late husband and the estate of her late husband have been in possession of the suit property from the time he acquired the land.
23. On its part, the 1st defendant led evidence to the effect that an unidentified broker showed them the land and introduced them to a man who identified himself as James Kamau Njure. Both the broker and the alleged James Kamau Njure were not called as witnesses. Evidence has emerged establishing that all the preceding entries relating to the 1st defendant's title were fraudulent. The logical conclusion of the evidence that emerged in this suit is that the 1st defendant was conned by fraudsters colluding with Land Registry staff. The fraudsters caused the genuine land register relating to the suit property to disappear and generated a fraudulent purported first edition register. It has been observed that the subsequent entries including the one that purported to vest the suit property in the 1st defendant were all fraudulent. That being the case, it is clear that the purported James Kamau Njure was a conman and had no title to pass to the 1st defendant.



24. Our courts have been unequivocal on the fate of fraudulently acquired titles. The Court of Appeal rendered itself on this aspect not too long ago in *Arthi Highway Developers Limited v West End Butchery Limited and 6 others* [2015] eKLR as follows:

“68. It is also stated therein that “the doctrine of purchaser without notice never enabled a purchaser to take free from legal rights, as distinct from equitable interests.” So that, even if the issue of bonafide purchaser arose in this matter which, in our finding, it did not, we are not satisfied that the evidence tendered by Arthi supports a credible finding that it was a bonafide purchaser of the disputed land.

69. It is our finding that as between West End and Arthi, no valid title passed and the one exhibited by Arthi before the trial court was an irredeemable fake. It follows that Arthi had no title to pass to subsequent purchasers, and therefore KMAH, Yamin and Gathoni cannot purport to have purchased the disputed land or portions thereof.”

25. Regrettably the above is the fate of the irredeemable fake title which the conman going by the name James Kamau Njure purported to sell to the 1st defendant. The conman had no legitimate title to pass to the 1st defendant.

26. The 1st defendant’s counsel contended that the 1st defendant is an innocent purchaser for value. I would describe the 1st defendant as a victim of fraud and negligence. Had the 1st defendant received proper counsel, they would have carried out due diligence in relation to the certified parcel register which they exhibited, indicating that they had a copy of the fraudulent parcel register at the time they were entering into the fraudulent transaction. Had their advocate carried out due diligence relating to entry Number 3 which related to Kiambu CM Court Succession Cause No 210 of 2014, they would have established that they were dealing with a fraudster. The 1st defendant was simply conned by fraudsters who did not have a valid title to pass to them.

27. The 1st defendant waved the fraudulent title uttered to it by the fraudster. In my view, the fact that the 1st defendant holds a purported registered title is not a ground for upholding the title when clear evidence has been presented establishing that the title is a product of fraud and that the person who purported to procure and utter it to the 1st defendant had no lawful title to pass to the 1st defendant. The Court of Appeal said the following on the evidential value of a fraudulent title in *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

28. Consequently, it is my finding that the late John Wamburu Kamau whose estate is administered by the plaintiff is the legitimate proprietor of the suit property.

29. The fourth issue relates to the appropriate reliefs or order to be made in the circumstances of this case. I have made findings to the effect that the land register opened on 25/4/2017 was opened fraudulently as part of a fraudulent scheme. I have also made a finding to the effect that entry numbers 1 to 7 were part of the fraudulent scheme. I have further made a finding to the effect that the late John Wamburu



Kamau is the legitimate proprietor of the suit property. Further, I have made a finding to the effect that the 1st defendant was conned by a fraudster who had no legitimate title nor land to sell to it. Given the above findings, it follows that the plaintiff is entitled to orders nullifying the fraudulent register. Further, the plaintiff is entitled to an order reconstructing the legitimate land register which the fraudsters caused to disappear. For their negligence, the 1st defendant will bear a portion of the plaintiff's costs of this suit. Similarly, for the involvement of staff within the Land Registry in the fraud, the Department of Lands will bear a portion of the plaintiff's costs. The 1st defendant's counterclaim fails wholly.

### **Disposal Orders**

30. In the end, the court makes the following disposal orders:
- a. The relevant Land Registrar is hereby ordered to cancel the fraudulent land register opened on 25/4/2017 together with all the subsequent entries, and also cancel the title issued to Tembo Ventures Housing Co-operative Ltd relating to land parcel number Ruiru East/Juja East Block 2/1074.
  - b. The relevant Land Registrar is hereby directed to restore/reconstruct or open a second edition land register replacing the previous lawful land register which was opened on November 10, 1989 and which bore John Wamburu Kamau as the registered proprietor of the above parcel of land. The said new or second edition register shall bear John Wamburu Kamau as the registered proprietor of land parcel number Ruiru East/Juja East Block 2/1074.
  - c. The 1st defendant's counterclaim is dismissed for lack of merit.
  - d. The two defendants shall equally share the plaintiff's costs of the primary suit and counterclaim. For avoidance of doubt, the 2nd defendant's portion of costs shall be borne by the Department of Lands in the Ministry of Lands and Physical Planning.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF MAY 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Koyyoko for the 1st defendant

Court Assistant: Ms Lucy Muthoni

